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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

No. 708.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

Petitioners,

vs.

THE UNITED STATES, EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR A WRIT OF CERTIORARI.

RICHARD L. KENNEDY,
St. Paul, Minnesota,
LYMAN T. POWELL,
and
JOHN S. SPROWLS,
Superior, Wisconsin,
Counsel for Respondent.

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While the granting or the denial of a petition for a writ of certiorari appears to be a matter within the discretion of this court, there are certain statements made in the brief in support of the petition for a writ of certiorari which should not go unchallenged.

It will be observed that the brief, in support of the petition for a writ of certiorari, consists of:

I. A denial that inherent power vests in the Federal Courts to punish for contempt, without a jury; and

II. An assertion that the status of the petitioners was that of employees, regardless of the fact that since July 1, 1922, they had been out on a strike.

I.

That inherent power vests in the Federal Courts to punish for contempt, without a jury, has been recognized by a long line of decisions of this court.

United States v. Hudson and Goodwin, 11 U. S. 32;

Martin v. Hunter, 14 U. S. 304, 328;

Anderson v. Dunn, 19 U. S. 204, 227;

Ex parte Robinson, 86 U. S. 505;

Ex parte Terry, 128 U. S. 289;

Eilenbecker v. Plymouth County, 134 U. S. 31, 36;

Interstate Commerce Commission v. Brimson, 154 U. S. 447, 489;

In re Debs, 158 U. S. 564, 595;

Tinsley v. Anderson, 171 U. S. 101, 108;

Bessette v. W. B. Conkey Co., 194 U. S. 324, 337;

Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450;

Gompers v. U. S., 233 U. S. 604, 610.

Innumerable decisions of the State Courts and of the Federal Courts, other than this court, are to the same effect.

II.

Were the petitioners "employes" within the meaning of the Clayton Act?

The petitioners were members of an organization which declared a strike, effective on July 1, 1922. The activities of this organization, following that date, and its methods of conducting this strike, are summarized in U. S. v. Railway Employees Department of the American Federation of Labor, et al., 290 Federal 978. From this decision it appears that the statement, in that portion of the brief in support of petition for a writ of certiorari, (page 15), entitled 'Conclusion as to status of Employees" that a strike is "a stoppage or suspension of *work* for the very purpose of improving the conditions of employment," does not accurately describe the methods of the organization of which the petitioners were members.

A claim that the relationship of employer and employee continued to exist under the circumstances described in said decision startles "the in-

formed person as would a statement by the court that the world is flat and immobile."

Respectfully submitted,

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